IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.664 of 2005
Date of Decision : September 12, 2006.

Ramesh Chand ..... Petitioner

Vs.

Naresh Kumar Prasher @ Naresh Prasher ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

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Present : Mr.S.C.Kapoor, Senior Advocate
with Mr.Sanjiv Sharma, Advocate
for the petitioner.

Mr.S.R.Hooda, Advocate
for the respondent.

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P.S.Patwalia, J. (Oral) :

The present revision petition is directed against the order dated 27.7.2004 passed by the Rent Controller, Ganaur vide which the petition filed by the landlord was allowed and the tenant was ordered to be evicted from the premises and order dated 14.1.2005 passed by the learned appellate authority Sonepat whereby the first appeal filed by the tenant was dismissed.

Learned counsel for the petitioner-tenant has raised a two fold

contention before me. Firstly he has argued that it has come on record that the son of the landlord is now employed as an Executive in a Company and is drawing a handsome salary. It is argued that he was appointed as Technical Support Executive in April 2003 and has been promoted as Technical Head in January 2004. He is now getting a salary of Rs.2.37 lacs per annum. In this view of the matter it is submitted that the ground for personal necessity pleaded by the landlord to the effect that his son has qualified the B.C.A.Course and therefore in need of the shop for running his Computer Center, no longer survives. This contention has been rejected by the appellate authority by placing reliance on a judgment of the Hon'ble Supreme Court in *Raghunath G.Panhale (dead) by LRs vs. M/s Chaganlal Sundarji and Co.* reported as *AIR 1999 SC 3864* as also the judgment of this court in *Balwant Singh Chaudhary vs. The Hindustan Petroleum Corporation Limited Co.* reported as *2004 (2) PLR 198.* The view taken is that the landlord need not loose his existing job or resign or reach a level of starvation to secure a finding that he should get possession of his premises for establishing a business. The relevant observations of the appellate authority in this regard are as hereunder :-

> ***"31.*** *The word "reasonable" connotes that requirement or need is not fanciful or unreasonable, it cannot be a mere desire. Requirement coupled with word "reasonable" means that something more than a mere desire. The argument put forth on behalf of the tenant was that if the son was really keen to start computer center,*

they could have taken some other accommodation on rent to show their genuineness and as he had not resigned from the job, his need was not genuine. A similar question had arisen in Balwant Singh Chaudhary Vs. Hindustan Petroleum Corporation Ltd. Co. 2004 (2) P.L.R. 198 where reference was made to an authority of Hon'ble Apex Court reported in AIR 1999 SC 3864. Para 11 of the judgment of the Apex Court was reproduced which reads as under :-

"11. *It will be seen that the trial court and the appellate Court had clearly erred in law. They practically equated the test of "need or requirement" to be equivalent to "dire or absolute or compelling necessity". According to them, if the plaintiff had not permanently lost his job on account of the lock out or if he had not resigned his job, he could not be treated as a person without any means of livelihood, as contended by him and hence not entitled to an order for possession of the shop. This test, in*

our view, is not the proper test. A landlord need not lose his existing job nor resign it nor reach a level of starvation to contemplate that he must get possession of his premises for establishing a business. The manner in which the courts have gone into the meaning of "lockout" in the Industrial Disputes Act, 1947 appears to us to be nothing but a perverse approach to the problem. One cannot imagine that a landlord who is in service should first resign his job and wait for the unknown and uncertain result of a long drawn litigation. If he resigned his job, he might indeed end up in utter poverty. Joblessness is not a condition precedent for seeking to get back one's premises. For that matter assuming the landlord was in a job and had not resigned it or assuming that pending the long-drawn litigation he started some other temporary water business to sustain himself, that would not be an indication that the need for

establishing a grocery shop was not a bona fide or a reasonable requirement for that it was motivated or was a mere design to evict the tenant. It is not necessary for the landlord to adduce evidence that he had money or deposit in a bank nor produce proof of funds to prove his readiness and willingness as in a suit for specific performance of an agreement of sale of immoveable property. So far as experience is concerned, one would not think that a grocery business was one which required extraordinary expertise. It is, therefore, clear that the entire approach of both the courts was absolutely wrong in a law perverse on fact."

32. *Keeping the above into view, it is held that the proper test to find out whether the need was genuine, the son is not required to resign from the job nor to succeed in the petition he should have taken any other property on rent.*

33. *We have been seeing that the litigations are*

> *long drawn and it takes a number of years for the matters to be decided. The landlord cannot be expected to sit back at home just to show his genuineness or his bona fide to the tenant that his need was "reasonable". The argument raised on behalf of Appellant is sans merit."*

I am also of the opinion that merely because the landlord's son has taken employment during the pendency of the proceedings before the Rent Controller and Appellate Authority rather than sitting idle at home would not by itself mitigate against the plea for personal necessity in view of the observations made by the Hon'ble Supreme Court and this Court in the judgments referred to herein above. Therefore I find no merit in this plea raised by the petitioner.

Learned counsel for the petitioner then argues that in fact the landlord has another house on a portion of which a shutter is installed. He therefore contends that the landlord has an alternative accommodation where the landlord's son can commence his business. It is the contention that actually a shop has been made in the house of the landlord which can be used for starting the said Computer Center. The lower appellate court has however found that no evidence has been led by the petitioner-tenant to substantiate this plea. Merely because a shutter has been affixed on a portion of a residential house in the possession of the landlord would not lead to a conclusion that there was a shop in the house. This is all the more so in view of the firm testimony of the landlord that the same was a residential house where he and his family was residing. Under these

circumstances this contention was also rejected by the appellate authority with the following observations :-

> ***"30.*** *.... An argument was also raised that there was a shop in the house of the landlord which could be used for starting the center. The tenant had by way of additional evidence produced some photographs to show that in the house where the petitioner was residing a shutter had been fixed and there was a shop in the house. Not a single person has come forward to depose that they had ever seen the shutter open or that a shop was being run. There is no evidence when the shutter was actually installed. It is admitted that the respondent's house is very close to the house where the landlord is residing. The landlord had filed an application that a local commissioner be appointed so that he visit the property and actually see for himself the purpose for which that area was being used. The landlord's case is that merely installation of a shutter would not mean that it was a shop. I am of the view that even though a shutter had been installed in the house would not mean that it was a shop. No one in the*

> *vicinity has seen it being used as shop. Even otherwise the tenant can not say that the computer center be opened in his house."*

I am in agreement of the view taken by the appellate authority that in the absence of any evidence having been led by the tenant and merely on installation of a shutter it cannot be taken to be that there was a shop in the residential house. I therefore find no merit in the contention raised by the learned counsel for the petitioner.

The revision petition is therefore dismissed.

At this stage learned counsel for the petitioner submits that he should be granted some reasonable time to vacate the premises. Learned counsel for the respondent states that in the facts of this case no sufficient ground is made out to give any further time to the tenant. However he states that a period of three months be given to him if an undertaking is filed to hand over the vacant possession of the premises to the landlord at the end of that period. Accordingly I grant three months' time to vacate the premises subject to filing of written undertaking by the tenant to the effect that he would hand over the vacant possession of the premises at the expiry of three months. Let this undertaking be filed within a period of four weeks from today. Thereafter the tenant would be granted three months' time to hand over the vacant possession of the premises to the landlord.

September 12, 2006 (P.S.Patwalia)
monika Judge